

## Form 7500, Section A

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### Section A Clauses Apply to All Subcontracts.

Unless specifically cited in the Schedule as not applying or identified in the clause as being self-deleting, the clauses listed below shall apply to all subcontracts into which this document is incorporated.

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**A1, Affirmative Action for Handicapped Workers** (Incorporated by Reference) (FAR 52.222-36/Prime Contract Article 10, Clause 14)

*(This clause applies if the subcontract exceeds \$2500.)*

**A2, Affirmative Action for Special Disabled and Vietnam Era Veterans** (Incorporated by Reference ) (FAR 52.222-35/Prime Contract Article 10, Clause 12)

*(The above clause applies if the subcontract exceeds \$10,000.)*

**A3, Antikickback Procedures** (FAR 52.203-7/Prime Contract Article 10, Clause 3)

(a) **Definitions.** *"Kickback,"* means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to the University, a University employee, a subcontractor, or a subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a subcontract at any tier relating to the prime contract.

*"Person,"* means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

*"Prime contract,"* means contract W-7405-ENG-36 between the United States Department of Energy (DOE) and The University of California, Los Alamos National Laboratory (University) for the purpose of obtaining supplies, materials, equipment, or services of any kind.

*"University employee,"* means any officer, partner, employee, or agent of the University.

*"Subcontract,"* means a contract or contractual action entered into by the University or a higher-tier subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under the prime contract.

*"Subcontractor,"* means (1) any person, other than the University, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under the prime contract or under a subcontract entered into in connection with the prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the University or a higher-tier subcontractor.

*"Subcontractor employee,"* means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 USC 51-58) (the Act) prohibits any person from

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

- (3) Including, directly or indirectly, the amount of any kickback in the subcontract price charged by the Subcontractor to the University, or in the subcontract price charged by a lower-tier subcontractor to the Subcontractor.
- (c)(1) The Subcontractor will have in place and follow reasonable procedures designed to prevent and detect possible violation of the Act in its own operations and in its direct business relationships in connection with prime contract.
- (2) When the Subcontractor has reasonable ground to believe that a violation of the Act may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the Laboratory's Controller, or Laboratory's Counsel.
- (3) The Subcontractor shall cooperate fully with any investigation of a possible violation of the Act.
- (4) Regardless of the subcontract tier at which a kickback was provided, accepted or charged in connection with the prime contract in violation of the Act, the University may
- ( i ) Offset the amount of the kickback against any monies owed by the University under the subcontract; and/or
  - ( ii ) Direct the Subcontractor to withhold from sums owed to a lower-tier subcontractor, the amount of the kickback. The University may direct that the monies withheld be paid to DOE or if DOE has offset the monies under the prime contract, paid to the University. In either case, the Subcontractor shall notify the University when monies are withheld.
  - ( iii ) Nothing in this clause precludes any contractual or common law remedy available to the University.
- ( 5 ) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5), in all lower-tier subcontracts under the subcontract.

#### **A4, Assignment of Claims (FAR 52.232-23)**

- (a) The subcontract or any right, remedy, or obligation hereunder is assignable in whole or in part by the University to the Government or its designee. Under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as the Act), the Subcontractor may assign its rights to be paid amounts due or to become due because of the performance of the subcontract to a bank, trust company, or other financial institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any bank, trust company, or other financial institution.

- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under the subcontract and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of the subcontract.
- (c) The Subcontractor shall not furnish or disclose to any assignee under the subcontract any classified document, including the subcontract or information related to work under the subcontract until the University authorizes such action in writing.

**A5, Assignment of Subcontracts** (BUS-43, Exhibit C, Article 12)

The subcontract or any right, remedy, or obligation arising out of the subcontract is assignable in whole or in part by the University to the Government or its designee. Except as to any payment due hereunder, the subcontract is not assignable by the Subcontractor without the written approval of the University.

**A6, Audit-Negotiation** (FAR 52.215-2)

*(This clause applies if the subcontract exceeds the amount set forth in Part 13 of the FAR and was entered into by negotiation.)*

- (a) **Examination of Costs.** If the subcontract is a cost-reimbursement, incentive, time-and-material, labor-hour, or price-redeterminable, or any combination of these, the Subcontractor shall maintain, and the University or representatives of the University, including employees of the Government, shall have the right to examine and audit books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) sufficient to reflect properly all costs claimed to have been incurred in performing the subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's facilities or parts of them engaged in performing the subcontract.
- (b) **Cost or Pricing Data.** If, pursuant to law, the Subcontractor has been required to submit cost or pricing data in connection with pricing the subcontract or any modification to the subcontract, the University or representatives of the University, including employees of the Government, shall have the right to examine and audit all books, records, documents, and other data of the Subcontractor regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, or performing the subcontract or modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data submitted, along with the computations and projections used. The right of examination shall

extend to all documents necessary to permit adequate evaluation of the cost of pricing data submitted, along with the computations and projects used.

- (c) **Reports.** If the Subcontractor is required to furnish cost, funding, or performance reports, the University or appropriately authorized representatives of the University, including employees of the Government, shall have the right to examine and audit books, records, other documents, and supporting materials for the purpose or evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- (d) **Availability.** The Subcontractor shall make available at its office(s) at all reasonable times the materials described in paragraphs (a) and (b) above for examination, audit, or reproduction until three years after final payment under the subcontract or for any shorter period specified in Subpart 4.7 of the FAR, Contractor Records Retention, or for any longer period required by statute or by other clauses of the subcontract. In addition
  - (1) If the subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after the resulting final termination settlement; and
  - (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the subcontract shall be made available until such appeals, litigation, or claims are disposed of.
- (e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Subcontractor may transfer computer data in machine readable form from one reliable computer medium to another. The Subcontractor's computer data retention and transfer procedure shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (C) of this clause affects neither the Subcontractor's obligations nor the Government's rights under this clause.
- (f) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph
  - (f), in all cost reimbursable lower-tier subcontracts under this subcontract that are over the small purchase limitation in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the University under the Government prime contract.

#### **A7, Buy American Act - Supplies (FAR 52.225-3)**

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.
- (b) **Definitions.** "*Components*," as used in this clause, means those goods incorporated directly into the end products.

*"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraph (c)(2) or (c)(3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.*

*"End products," as used in this clause means those goods to be acquired for public use under the subcontract.*

(c) The Subcontractor shall use only domestic end products, except those

- (1) For use outside the United States;
- (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (3) For which the applicable federal agency determines that domestic preference would be inconsistent with the public interest; or
- (4) For which the applicable federal agency determines the cost to be unreasonable.

*(The foregoing requirements are administered in accordance with Executive Order No 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR.)*

**A8, Clean Air and Water** (Incorporated by Reference) (FAR 52.223-2/Prime Contract Article 14, Clause 4)

*(The above clause applies if the subcontract is expected to exceed \$100,000.)*

**A9, Contract Work Hours and Safety Standards Act - Overtime Compensation** (FAR 52.222-4)

*(This clause applies if the subcontract exceeds \$2500.)*

(a) **Overtime Requirements.** No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work that may require or involve the employment of laborers or mechanics (see FAR 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) **Violation, Liability for Unpaid Wages, and Liquidated Damages.** In the event of any violation of

the provisions set forth in paragraph (a) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the Government (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wage required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for Unpaid Wages and Liquidated Damages.** Upon its own action or upon written request of an authorized representative of the Department of Labor, the University shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract; any other Federal contract with the same Subcontractor, or any Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same Subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) **Payrolls and Basic Records.**

(1) The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by the Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of the University, the DOE, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) **Subcontracts.** The Subcontractor or lower-tier subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

**A10, Convict Labor** (Incorporated by Reference) (FAR 52.222-3)

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**A11, Covenant Against Contingent Fees** (FAR 52.203.5 as modified by DEAR 970.5203-1, Prime Contract Article 18, Clause 4)

(a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain the subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the University shall have the right to annul the subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration or otherwise recover the full amount of the contingent fee.

(b) **Definitions.** *"Bona fide agency,"* as used in this clause means an established commercial or selling

agency, maintained by a subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or University subcontracts nor holds itself out as being able to obtain any Government contract or University subcontract through improper influence.

*"Bona fide employee,"* as used in this clause means a person employed by a subcontractor and subject to the subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or University subcontracts nor holds out as being able to obtain any Government contracts or University subcontract through improper influence.

*"Contingent fee,"* as used in this clause means any commission, percentage fee, brokerage fee, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or University subcontract.

*"Improper influence,"* as used in this clause means any influence that induces or tends to induce a University or Government employee or officer to give consideration or to act regarding a Government contract or University subcontract on any basis other than the merits of the matter.

(c) **Lower-tier subcontracts.** Unless otherwise authorized by the University in writing, the Subcontractor shall

cause provisions similar to the foregoing to be inserted in all lower-tier subcontracts entered into under this subcontract.

**A12, Disposition of Material** (LANL Internal Clause)

Upon completion or termination of all work under the subcontract, the Subcontractor shall prepare for shipment, deliver, or dispose of all goods received from the University and all residual goods produced in connection with the performance of the subcontract that may be directed by the University or as specified in other provisions of the subcontract. All goods produced or required to be delivered under the subcontract become and remain the property of the University and/or the Government.

### **A13, Disputes** (LANL Internal Clause)

- (a) Except as otherwise provided for in the subcontract, all disputes arising under or relating to the subcontract shall be resolved in accordance with this clause.
- (b) **Definition.** "*Claim*," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this subcontract.
- (c) Unless otherwise provided for in the subcontract, a claim by the Subcontractor must be filed within 30 calendar days after the Subcontractor knows, or should have known, of the facts giving rise thereto.
- (d) Any claim by the Subcontractor shall first be presented to the University's procurement specialist, who shall attempt to resolve this matter. If the claim is not resolved by the University's procurement specialist in a manner satisfactory to the Subcontractor, and the Subcontractor desires to pursue further action, the claim must be presented in writing to the Laboratory's Procurement Manager for a written decision.
- (e) The Laboratory's Procurement Manager shall investigate the issues involved in the claim and promptly issue a decision in writing. A copy of that decision shall be mailed to the Subcontractor and shall state the reason(s) for the decision. The decision of the Laboratory's Procurement Manager shall be the final administrative decision of the Laboratory.
- (f) The decision of the Laboratory's Procurement Manager shall be reviewed exclusively through the process stated in subsequent paragraphs of this clause.
- (g) A claim by the University against the Subcontractor that is signed by the Laboratory's Procurement Manager, or a decision by the Laboratory's Procurement Manager regarding a claim by the Subcontractor, may be submitted to the DOE Contracting Officer for review and a written decision. Any such submittal by the Subcontractor shall be made within 30 calendar days after the Subcontractor's receipt of the decision of the Laboratory Procurement Manager.
- (h) The decision of the DOE Contracting Officer shall be issued in a reasonable amount of time and shall be final unless one of the parties appeals the decision, within 30 days from the receipt of the decision, to the DOE Board of Contract Appeals. The decision of the Board shall be final and conclusive.
- (i) For Subcontractor claims of \$50,000 or less, the Laboratory must, if requested in writing by the Subcontractor, render a decision within 60 days of the request. For Subcontractor claims exceeding \$50,000, the Laboratory must, within 60 days, decide the claim or notify the Subcontractor of the date by which the decision will be made.
- (j) Pending final resolution of any claim, request for relief, appeal, or action arising under or relating to the

subcontract, the Subcontractor shall proceed diligently with performance of the subcontract and in accordance with any direction of the University's procurement specialist.

**A14, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era** (Incorporated by Reference) (FAR 52.222-37/Prime Contract Article 10, Clause 13)

*(The above clause applies if the subcontract exceeds \$10,000.)*

**A15, Equal Opportunity** (Incorporated by Reference) (FAR 52.222-26/Prime Contract Article 10, Clause 11)

**A16, Examination of Records by Comptroller General** (FAR 52.215-1 As Modified by DEAR 970.5203-2, Prime Contract Article 7, Clause 5)

- (a) This clause applies if the subcontract exceeds the small purchase limitation in Part 13 of the FAR and was entered into by negotiation.
- (b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until three years after final payment under this subcontract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to this subcontract.
- (c) The Subcontractor agrees to include in lower-tier subcontracts under the subcontract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until three years after final payment under the lower-tier subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the lower-tier subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the lower-tier subcontract. "Lower-Tier subcontract" as used in this clause excludes (1) purchase orders not exceeding the FAR Part 13 small purchase limitation and (2) lower-tier subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of the subcontract, or (3) costs and expenses of the subcontract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.
- (e) Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

**A17, Gratuities (FAR 52.203-3)**

- (a) The right of the Subcontractor to proceed may be terminated by written notice if, after notice and hearing, the University or DOE determines that the Subcontractor, its agent, or another representative
  - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the University; and
  - (2) Intended, by the gratuity, to obtain a subcontract or favorable treatment under a subcontract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If the subcontract is terminated under paragraph (a) above, the University is entitled
  - (1) To pursue the same remedies as in a breach of the subcontract, and
  - (2) In addition to any other damages provide by law, to exemplary damages of not less than three or more than ten times the cost incurred by the Subcontractor in giving gratuities to the person concerned, as determined by the University or DOE. (This subparagraph (c)(2) is applicable only if the subcontract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the subcontract.

**A18, Hazardous Material Identification and Material Safety Data (FAR 52.223-3/Prime Contract Clause 14, Clause 5)**

- (a) As prescribed in Federal Standard No. 313B, the Subcontractor agrees to submit 5 days before delivery of the goods, a Material Safety Data Sheet (Department of Labor Form OSHA-20) for all hazardous material, whether or not listed in Appendix A of the Standard. This obligation applies to all goods delivered under the subcontract that will involve exposure to hazardous materials or items containing these materials.

Failure to comply with U.S. Department of Transportation (Title 49 of the Code of Federal Regulations) or International Air Transport Association rules and regulations governing hazardous and dangerous goods may result in the University deducting any necessary repackaging costs from the Subcontractor's invoice. If requested by the University's procurement specialist, the Subcontractor shall provide the applicable packaging certification at no additional charge. One copy of each Material Safety Data Sheet must accompany each shipment of hazardous materials.

- (b) **Definition.** "*Hazardous material*," as used in this clause, is defined in Federal Standard No 313B, in effect on the date of the subcontract.
- (c) Neither the requirements of this clause nor any act or failure to act by the University shall relieve the Subcontractor of any responsibility or liability for the safety of University, Subcontractor, lower-tier subcontractor, or other personnel or property.
- (d) The Subcontractor shall comply with applicable federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The University's rights in data furnished under the subcontract with respect to hazardous materials are as follows:
- (1) To use, duplicate, and disclose any data to which this clause applies. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the University for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of the subcontract providing for rights in data.
  - (3) That the University is not precluded from using in any manner similar or identical data acquired from other sources.
  - (4) That the data shall not be duplicated, disclosed, or released outside the University or the Government, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:  
  
**"These data are furnished under University of California, Los Alamos National Laboratory Subcontract No. \_\_\_\_\_ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of ( the Subcontractor ) . This legend shall be marked on any reproduction of this data."**
  - (5) That the Subcontractor shall not place the legend or any other restrictive legend on (i) any data that the Subcontractor or any lower-tier subcontractor previously delivered to the University without limitations or (ii) should be delivered without limitation under the provisions of the Rights in Data - General clause of this document.
  - (f) The Subcontractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in lower-tier subcontracts (including purchase designations or subcontracts) under the subcontract involving hazardous materials.

**A19, Limitation on Payments to Influence Certain Federal Transactions (FAR 52.203-12/Prime Contract Article 7, Clause 19)**

*(This clause applies if the subcontracts exceeding \$100,000.)*

(a) **Definitions.** "Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (a) The awarding of any Federal contract.
- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (c) A special Government employee, as defined in section 202, title 18, United States Code.
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

*"Person,"* as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

*"Reasonable compensation,"* as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

*"Reasonable payment,"* as used in this clause, means, with respect to professional and other technical

services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

*"Recipient,"* as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This

term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

*"Regularly employed,"* as used in this clause, means with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

*"State,"* as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

**(b) Prohibitions.**

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal

contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal

appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

**(i) Agency and legislative liaison by own employees.**

does (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

specifically (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information requested by an agency or Congress is permitted at any time.

they (C) The following agency and legislative liaison activities are permitted at any time where are related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

they (D) The following agency and legislative liaison activities are permitted at any time where are not related to a specific solicitation for any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95.507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

**(ii) Professional and technical services.**



does (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, not apply in the case of

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services"

shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communication with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

this (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) **Disclosure.**

file (A) The Subcontractor who requests or receives from an agency a University subcontract shall

with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes

(B) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes\_

for (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individuals(s) influencing or attempting to influence a covered Federal action; or

attempt (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or to influence a covered Federal action.

disclosure (C) The Subcontractor shall require the submittal of a certification, and if required, a

form by any person who requests or receives any lower-tier subcontract exceeding \$100,000 under the subcontract.

from (D) All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded

tier to tier until received by the prime Subcontractor. The prime Subcontractor shall submit all disclosures to the Contract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the lower-tier subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor

(iv) **Agreement.** The Subcontractor agrees not to make any payment prohibited by this clause.

(v) **Penalties.**

- who
- (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (B) Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.
- (vi) **Cost allowability.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**A20, Notice and Assistance Regarding Patent and Copyright Infringement (FAR 52.227-2)**

*(This article applies if the subcontract exceeds the amount set forth in Part 13 of the FAR.)*

- (a) The Subcontractor shall report to the Government, through the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based upon the performance of the subcontract, of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the University or the Government on account of any alleged patent or copyright infringement arising out of the performance of the subcontract or out of the use of any goods furnished or work or services performed under the subcontract, the Subcontractor shall furnish to the University, when requested by the University, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of, this clause in all lower-tier subcontracts at any tier for goods or services (including construction and architect-engineer subcontracts and those for goods, models, samples, or design or testing services) expected to exceed the small purchase dollar limitation set forth in Part 13 of the FAR.

**A21, Notice of Labor Disputes (FAR 52.222-1)**

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the subcontract, the Subcontractor shall immediately give notice, including all relevant information, to the University.
- (b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b), in any lower-tier subcontract to which a labor dispute may delay the timely performance of the subcontract; except that each subcontract shall provide that if its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

**A22, Officials Not to Benefit** (FAR 3.102-1)

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of the subcontract, or to any benefit arising from it. However, this clause does not apply to the subcontract to the extent that the subcontract is made with a corporation for the corporation's general benefit.

**A23, Preference for Privately Owned U.S. Flag Vessels** (FAR 52.247-64/Prime Contract Article 7, Clause 24)

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
- (1) Acquired for a U.S. Government agency account;
  - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
  - (3) Furnished for the account of a foreign nations in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
  - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Subcontractor shall submit through the University, one legible copy of a rated on-board ocean

bill of lading for each shipment to both (i) the Contracting Officer, and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.

(2) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of

loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Subcontractor shall insert the substance

of this clause, including this paragraph (d), in all lower-tier subcontracts or purchase orders under this subcontract.

(e) The requirement in paragraph (a) does not apply to —

- (1) Small purchases as defined in 48 CFR 13;
- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available under Foreign Assistance Act of 1961 (22 U.S.C. 2353; and
- (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

**A24, Preference for U.S. - Flag Air Carriers** (FAR 52.247-63/Prime Contract Article 8, Clause 23)

*(This clause does not apply to small purchases made under small purchase procedures.)*

(a) **Definitions.** *"International air transportation,"* as used in this clause, means transportation by air between a

place in the United States and a place outside the United States or between two places both of which are outside the United States.

*"United States,"* as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

*" U.S.-flag air carrier,"* as used in this clause, means an air carrier holding a certificate under section

401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C.

1517) (Fly American Act) requires that all Federal agencies and Government contractors and University subcontractors use U.S.- flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers

for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international

air transportation, the Subcontractor shall include a certification on vouchers involving such transportation essentially as follows:

#### ***Certification of Unavailability of U.S.-Flag Air Carriers***

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the FAR). States reasons:...

***(End of Certification).***

**A25, Printing** (DEAR 970.5204-19/Prime Contract Article 8, Clause 6)

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- (a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "*Printing*" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

**A26, Priorities and Allocations** (DEAR 970.5204-33/Prime Contract Article 8, Clause 8)

- (a) The Subcontractor shall follow the provisions of the Defense Priorities and Allocation System (DPAS) Regulation (15 CFR 350) in obtaining controlled materials and other products and materials needed for performance of the subcontract.
- (b) A program or project under this subcontract may be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Priorities Act of 1950, as amended by the Energy Policy and Conservation Act (Public Law 94-163, 42 U.S.C. 6201 et seq.) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Department of Energy and Commerce.

**A27, Protest After Award** (FAR 52.233-3)

- (a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the University may, by written order to the Subcontractor direct the Subcontractor to stop performance of the work called for by the subcontract. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the stop work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered

by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the University shall either

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the

protest, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or contract price or both, and the contract shall be modified, in writing, accordingly, if

(1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost

properly allocable to, the performance of any part of this contract; and

(2) The Subcontractor asserts its right to an adjustment within 30 days after the end of the period of

work stoppage; provided, that if the Contracting Specialist decides the facts justify the action, the University may receive and act upon a proposal at any time before final payment under the subcontract.

(c) If a stop-work is not canceled and the work covered by the order is terminated for the convenience of

the University, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the

University shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The University's rights to terminate this contract at any time are not affected by action taken under this clause.

#### **A28, Required Sources for Jewel Bearings and Related Items (FAR 52.208-1)**

(a) This clause applies only if the supplies to be furnished under the subcontract contain jewel bearings

or related items; the supplies are to be used in the United States, its possessions and Puerto Rico; and the total price of the subcontract exceeds the small purchase dollar limitation set forth in Part 13 of the FAR.



(b) **Definitions.** "*Jewel bearing*," as used in this clause, means a piece of synthetic corundum (sapphire

or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes - olive, watch hole - straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"*Plant*," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"*Price List*," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"*Related Item*," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other

than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under the subcontract (or

an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for

stock. If the order is for an individual subcontract, the prime contract number shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Subcontractor's or subcontractor's order. If

the order is declined or rejected, the Subcontractor shall notify the contract administration office cognizant of the contract promptly in writing, enclosing a copy of the rejection notice. Unless the

declination or rejection has been caused by current excessive and overdue Subcontractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the subcontract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Subcontractor agrees to insert this clause, including this paragraph (e), and the prime contract

number in every lower-tier subcontract unless the Subcontractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

#### **A29, Security** (DEAR 952.204-2/Prime Contract Article 13, Clause 1)

(a) **Responsibility.** The Subcontractor has the duty to safeguard all classified information, special nuclear material, and other Government property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss, and theft the classified documents and material in the Subcontractor's possession in connection with the performance of work under the subcontract. Except as otherwise expressly provided in the subcontract, the Subcontractor shall, upon completion or termination of the subcontract, transmit to the University any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of the subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the subcontract and such retention is approved by the University, the Subcontractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the University, the security provisions of the subcontract will continue to apply to the matter retained. Special nuclear material will not be retained after the completion or termination of the subcontract.

(b) **Regulations.** The Subcontractor agrees to conform to all security regulations and requirements of the DOE.

(c) **Definitions.** "*Classified information*," means Restricted Data, Formerly Restricted Data, or National Security Information.

"*Restricted Data*," means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

"*Formerly Restricted Data*," means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.

*"National Security Information,"* means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by or is under the control of the Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and that is so designated.

*"Special Nuclear Material (SNM),"* means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(d) **Security Clearance of Personnel.** The Subcontractor shall not permit any individual to have access

to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(e) **Criminal Liability.** It is understood that disclosure of any classified information relating to the work or

services ordered hereunder to any person not entitled to receive it or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under the subcontract may subject the Subcontractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et. seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(f) **Subcontracts and Purchase Orders.** Except as otherwise authorized in writing by the University,

the Subcontractor shall insert provisions similar to the foregoing in all lower-tier subcontracts and purchase orders under the subcontract.

### **A30, Security Access Authorization and Operations Security (LANL Internal Article)**

(a) **Access Authorization.** Subcontractor personnel engaged in the performance of work under a subcontract on University property, government premises, or offsite facilities are required to possess a DOE access authorization ("L" or "Q" clearance), and must comply with the following requirements. The Subcontractor shall be responsible for

(1) Completing and submitting all necessary application forms for authorized access in advance of the

need. Application forms may be obtained from the University Operational Security and Safeguards (OS) Division. All personnel granted an access authorization will be briefed, by the University, on access to classified matter, security areas, and security requirements;

(2) Safeguarding information that may come into the Subcontractor's possession or within the purview

of its work. Unless otherwise authorized by the University in writing, within 30 days of completion or termination of the order, the Subcontractor shall (a) return to the University all classified matter and badges in the possession of the Subcontractor or person under the Subcontractor's control, and (b) furnish to the University a Certificate of Nonpossession (for Offsite Facilities) as well as the Security Termination Statements (Form 5631.29) for all affected personnel; and

(3) Ensuring all cleared employees comply with DOE's security requirements including the provisions of DOE Order 5631.1B, "Security Education and Awareness Program."

(b) **Operations Security Program.** The Subcontractor agrees to implement and sustain a DOE Operations Security (OPSEC) Program in accordance with the provisions of the Laboratory's OPSEC Guidance for LANL Contractors Manual when awarded subcontracts involving access to and protection of classified or sensitive information, nuclear materials or other safeguards and security interests.

(c) Whenever the work under this order requires the issuance of "Q-cleared," "L-cleared," or "Escort Required" badges, the University may withhold final payment to the Subcontractor until all such badges are returned to the contract specialist as required in paragraph (a)(2) above.

#### **A31, Subcontractor Cost or Pricing Data (DEAR 970.5204-24)**

(a) The following clause shall be inserted in all subcontracts where such subcontracts exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), even though the original amount of the subcontract was below the threshold.

#### **CERTIFIED COST OR PRICING DATA (December 1994)**

(a)(1) The Subcontractor shall require under the situations described in (2) below, unless exempted

under the exceptions set forth in (3) below, each lower-tier subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

(2) Except as provided in (a)(3) of this clause, certified cost or pricing data shall be submitted prior to (i)

(i) the award of each lower-tier subcontract, the price of which is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), and (ii) the negotiation of the price of each change or modification to the lower-tier subcontract under this subcontract for which the price adjustment is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1).

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the

subcontractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Subcontractor states in writing the basis for applying this exception.

- (4) In submitting the cost or pricing data, the lower-tier subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by lower-tier subcontractors to the Subcontractor, as applicable, for retention.

- (b) The certificates required by this clause shall be in the form set forth below.

#### **Subcontractor's Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the University in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*.

Firm Name Title

Date of Execution\*\*\*

\* Identify the proposal, quotation, request for price adjustment, or other submission involved.

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the subcontract price was agreed to.

- (c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1) were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

- (d) If the original price of this subcontract exceeds the cost or pricing data threshold at FAR 15.804-2(a)(1) or

the price of any change or other modification to this subcontract is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), the Subcontractor agrees to furnish the University certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any change or other

modification does not apply to any lower-tier subcontractor change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the subcontract, nor does it apply to a lower-tier subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the subcontract.

(f) The Subcontractor agrees to insert paragraph (c) without change and the substance of paragraph (a),

(b), (c), (d), (e), and (f) of this clause in each lower-tier subcontract of hereunder in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1) and in each lower-tier subcontract of the cost or pricing data threshold at FAR 15.804-2(a)(1) a change or other modification thereto in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1).

(g) If the University determines that any price, including profit or fee, negotiated in connection with this

subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the Subcontractor, or any lower-tier subcontractor pursuant to this clause or any lower-tier subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data, then such prices or cost shall be reduced accordingly and the subcontract shall be modified in writing to reflect such reduction.

(h) Failure of the Subcontractor and the lower-tier subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact subject to the Disputes provisions of this subcontract.

*NOTE: Since the subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain lower-tier subcontracts, it is expected that the Subcontractor may wish to include a clause in each such lower-tier subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. It is also expected that any lower-tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier subcontractors.*

*This clause may also be used for subcontracts in which the amount of the subcontract is less than the cost or pricing data threshold at FAR 15.804-2(a)(1), if a certificate of cost or pricing data is obtained; if so used, the amount stated in the clause should be appropriately modified.*

*The contract administrator, for subcontracts estimated to be within the limits of delegated authority, may without power of redelegation, approve the waiver cited in FAR 15.804-3(l).*

**A32, Unclassified Controlled Nuclear Information (UCNI) (LANL Internal Clause)**

(a) Documents originated by the subcontractor or furnished by the Government through the University to

the subcontractor in connection with this project may contain Unclassified Controlled Nuclear Information (UCNI) as defined in Section 148 of the Atomic Energy Act of 1954, as amended. Therefore, the following limitation notice is stamped or typed on the cover of the documents:

"NOT FOR PUBLIC DISSEMINATION. THIS DOCUMENT CONTAINS INFORMATION THAT  
MAY BE SUBJECT TO SECTION 148 OF THE ATOMIC ENERGY ACT, AS AMENDED."

The subcontractor shall be responsible for protecting such information from authorized dissemination in accordance with DOE regulations, requirement, and instructions.

(b) UCNI may only be made available to authorized individuals. "Individuals" for purposes of this subcontract, means only U. S. citizens who have a need to know in the performance of official duties or DOE authorized activities and who are employees of the Government, employees of a Government contractor or subcontractors, or employees of a prospective Government contractor or subcontractor for the purpose of bidding on a Government contract.

(c) All parties receiving UCNI shall be obliged under penalty of law to protect such information as required by 10 CFR 1017.17, such responsibility including but not limited to the following:

(1) **General.** UCNI requires protection from unauthorized dissemination. UCNI must be protected and

controlled in a manner consistent with that customarily accorded other types of unclassified but sensitive information (e.g., proprietary business information, personnel, or medical records of employees, attorney-client information). The subcontractor shall establish and maintain a system for the protection of UCNI in its possession or under its control that is consistent with the physical protection standards established in this section. Each authorized individual or person granted special access to UCNI who receives, acquires, or produces UCNI or a document or material containing UCNI shall take reasonable and prudent steps to ensure that it is protected from unauthorized dissemination.

(2) **Protection in Use or Storage.** An authorized individual or a person granted special access to

UCNI shall maintain physical control over any document or material containing an UCNI notice that is in use so as to prevent unauthorized access to it. When any document or material containing an UCNI notice is not in use, it must be stored in a secure container (e.g., locked desk or file cabinet) or in a location where access is limited (e.g., locked or guarded office or controlled access facility).

- (3) **Reproduction.** A document or material containing an UCNI notice may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided that the reproduced document or material is marked and protected in the same manner as the original document or materials.
- (4) **Destruction.** A document of material containing an UCNI notice may be disposed of by any method that ensure sufficiently complete destruction to prevent its retrieval (provided that the disposal is authorized by the archivist of the United State under 41 CFR 101-11.4 and by agency records disposition schedules).
- (5) **Transmission.**
- (A) A document or material containing an UCNI notice must be packaged to prevent disclosure of the presence of UCNI when transmitted by a means that could allow access to the document or material by a person who is not an authorized individual or a person granted special access to UCNI. The address and return address must be indicated on the outside of the package.
- (B) A document or material containing an UCNI notice may be transmitted by the following means:
- (i) U.S. first class, express, certified or registered mail;
  - (ii) Any means approved for the transmission of classified documents or material;
  - (iii) An authorized individual or a person granted special access to UCNI when he or she can control access to the document or material being transmitted; or
  - (iv) Any other means determined by the Assistant Secretary for Defense Programs to be sufficiently secure.
- (C) UCNI may be discussed or transmitted over an unprotected telephone or telecommunications circuit when required by operational considerations. More secure means of communication should be used whenever possible.
- (6) **Automated Data Processing (ADP).** UCNI may be process or produced on any ADP system that is certified for classified information or that complies with the guidelines of Office of Management and Budget Circular No. A-71, "Security of Federal Automated Information Systems, or that has been approved for such use in accordance with the provisions of applicable DOE directives.
- (d) **Civil Penalty.** Any person who violates Section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under Section 148 of the Atomic Energy Act, including these regulations, is subject to a civil penalty. The Assistant Secretary for Defense Programs may recommend to the Secretary imposition of this civil penalty, which shall not exceed \$100,000 for each violation.

### **A33, Utilization of Labor Surplus Area Concerns (FAR 52.220-3)**



(a) **Applicability.** This clause is applicable if this subcontract exceeds the appropriate small purchase limitation in Part 13 of the FAR.

(b) **Policy.** It is the policy of the University and the Government to award contracts and subcontracts to concerns that agree to perform substantially in labor surplus areas (LSAs) when this can be done consistent with the efficient performance of the subcontract and at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use its best efforts to place lower-tier subcontracts in accordance with this policy.

(c) **Order of Preference.** In complying with paragraph (a) above and with paragraph (b) of the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Subcontractor shall observe the following order of preference in awarding lower-tier subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) **Definitions.** "*Labor surplus area*," as used in this clause means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

*"Labor surplus area concern,"* as used in this clause means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the subcontract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the subcontract price.

#### **A34, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FAR 52.219-8)**

(a) It is the policy of the University and the Government that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts and subcontracts let by any Federal agency. It is further the policy of the government that its contractors and subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their lower-tier subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Subcontractor hereby agrees to carry out this policy in the awarding of lower-tier subcontracts to the fullest extent consistent with efficient subcontract performance. The Subcontractor further agrees to cooperate in any studies or surveys that may be conducted by the United States Small

Business Administration, the DOE, or the University that may be necessary to determine the extent of the Subcontractor's compliance with this clause.

- (c) As used in this subcontract, the term "*small business concern*" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern.
- (1) That is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and
- (2) Whose management and daily business operations are controlled by one or more of such individuals.

This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Hawaiian organization, and which meets the requirements of 13 CFR 124.

The Subcontractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act. The Subcontract shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian organizations.

- (d) Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

### **A35, Utilization of Women-Owned Small Businesses (FAR 52.219-13)**

- (a) **Definitions.** "*Women-Owned Small Businesses*," as used in this clause means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"*Control*," as used in this clause means exercising the power to make policy decisions.

"*Operate*," as used in this clause means being actively involved in the day-to-day management of the business.

"*Small business concern*," as used in this clause means a concern, including its affiliates, that is

independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

- (b) It is the policy of the University and the Government that women-owned small businesses shall have  
the maximum practicable opportunity to participate in performing contracts and subcontracts awarded by any Federal agency.
- (c) The Subcontractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the lower-tier subcontracts it awards to the fullest extent consistent with the efficient performance of its subcontract.
- (d) The Subcontractor may rely on written representations by its lower-tier subcontractors regarding their  
status as women-owned small businesses.

**A36, Walsh-Healey Public Contracts Act** (Incorporated by Reference) (FAR 52.222-20)

*(If the subcontract is for the manufacturing or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000 and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the above article applies.)*